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ABSTRACT

One of a series of implementation documents prepared in conjunction with the revised minimum standards adopted in 1983 by the Ohio State Board of Education for elementary and secondary schools, this publication discusses the basic elements of a code of conduct for students that complies with the requirements set forth in the minimum standards. Chapter 1 discribes general procedures for developing a code of conduct. Concepts to be included in the code are reviewed, and the components of a code of conduct plan are outlined, as well as suggested formats for outlining corrective measures for violations. Chapter 2 focuses primarily on student rights and responsibilities, with special emphasis on constitutional rights. It describes how statements of student rights and responsibilities can be used to establish a framework for a code of conduct. Chapter 3 discusses several major discipline issues related to various aspects of student conduct. These include substance abuse, violence and vandalism, corporal punishment, personal appearance, truancy and tardiness, and nonschool conduct/extracurricular activities. Chapter 4 outlines the basic elements of due process and establishes a framework for its use in suspending or expelling students. References are included. (TE)

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FOREWORD

With the adoption of the 1983 minimum standards, the State Board of Education has established conditions to promote a general education of high quality in all chartered schools. The State Board of Education recognizes its responsibility to give direction to the system of education in the state. At the same time, there is flexibility within standards to establish educational programs that are responsive to local needs.

Minimum Standards for Elementary and Secondary Schools 1983 provide the potential for greatly improving education in Ohio. That potential can be reached through well-structured local and state leadership. To assist responsible implementation of minimum standards, staff in the Ohio Department of Education have prepared an implementation series consisting of fourteen documents. A distinction is made among the publications. Only one, *Procedures for School Evaluations*, is a compliance document. It contains the standards in a format readily used for self-evaluation. School personnel will find information about what is needed for a district and schools within the district to comply with standards. In the remaining publications, an effort is made to specify what the standard requires. Additional information, guidelines, procedural steps, and sample forms may go beyond what the standard requires. The purpose is to assist the local planning process, not to prescribe what shall be in every school in Ohio.

Minimum standards address the public's increasing expectations for schools with a requirement for competency based education in English composition, mathematics, and reading. Three of the publications, *Process Model for Course of Study, Competency Assessment and Testing*, and *Intervention* are aligned in addressing competency based education. A number of options are described for local consideration.

Appreciation is extended to school personnel who contributed to these publications by sharing their time, expertise, and materials. Appreciation is also extended to staff members who worked untold hours to make these publications possible.

Franklin B. Walter

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Superintendent of Public Instruction

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INTRODUCTION

The Minimum Standards for Elementary and Secondary Schools require that student conduct be governed by a code of conduct. This book is intended to assist school district personnel as they develop a code of conduct. In accordance with the minimum standards, school districts must develop a code of conduct that (1) specifies expectations for student attendance and conduct; (2) specifies procedures, corrective measures and penalties regarding code of conduct violations; (3) provides for the safeguard of due process rights; and (4) is available to parents, students, and school personnel.

The goal of any code of conduct is to prescribe, with as much specificity as possible, the parameters of acceptable behavior and the consequences of disruptive behavior. Students must know what is expected of them and they must be cognizant of what will happen if they fail to follow behavioral prescriptions. A code of conduct, however, must be sufficiently flexible to deal with unexpected circumstances or behaviors. Individual judgment and interpretation, even with a clearly defined code, play a prominent role in creating and maintaining a positive school climate.

In this publication the basic elements of a code of conduct are discussed in detail. The content and structure of a code of conduct will vary from school to school and district to district. There is, in essence, no "right" set of concepts for inclusion in a code. The purpose and focus for all schools and districts, however, is specific: a code of conduct serves as a mechanism for informing students, teachers and parents about ground rules for behavior in the school setting.

Chapter One of this document describes general procedures for developing a code of conduct. Concepts to be included in a code are reviewed, and the components of a code of conduct plan are outlined. Also included in Chapter One are suggested formats for use by schools and school districts in outlining corrective measures for violations of the code of conduct. The formats provide a description of several behavioral violations and outline possible corrective measures for school personnel to consider. These formats are intended to facilitate development of administrative procedures, not to prescribe specific corrective measures. Students must be aware of what will occur if they disregard the rules of the school. Similarly teachers must be aware of what is expected of them when a discipline problem occurs. Charts similar to the ones suggested in Chapter One may prove helpful in making all school participants aware of expectations for student behavior and the consequences of misconduct.

Chapter Two focuses primarily on student rights and responsibilities. Special emphasis is given to constitutional rights. Students are protected by the Constitution and responsibility for protection applies to boards of education. The State Legislature gives boards of

INTRODUCTION

education rulemaking authority regarding student behavior, but that rulemaking authority is balanced by the Constitution and the Courts.

A democratic society is based on a balance of rights and responsibilities. As students have increasingly had their rights clarified through legislation and litigation, they have also been reminded of and instructed in their responsibilities. While an individual does have certain constitutional rights, those rights are terminated at the point when they begin to infringe upon the rights of others. Chapter Two describes how statements of student rights and responsibilities can be used to establish a framework for a code of conduct.

Chapter Three provides a discussion of several major discipline issues. These issues relate to various aspects of student conduct. Legal and quasi-legal requirements are discussed with regard to each issue and suggested general procedures for dealing with problems are outlined.

Finally, in Chapter Four due process procedures are outlined. Since *Goss vs. Lopez* (1975), most school personnel have followed due process procedures in suspending and expelling students. Chapter Four outlines the basic elements of due process and establishes a framework for its use in terms of expulsion or suspension. The purpose of this chapter is to provide school personnel with sufficient information to begin the process of developing a formal due process procedure, not to prescribe the specific offenses for which expulsion and suspension would be warranted.

CODE OF CONDUCT

CHAPTER 1
The Code of Conduct

A code of conduct serves as a guide for behavior and should enable establishment of a positive climate for learning. It provides a detailed plan for how students are expected to behave and suggests options for teachers to consider when established policies and rules are broken. It should, in essence, enhance student self-discipline and serve to prevent discipline problems.

More specifically the code of conduct should include the following:

- Descriptions of what constitutes a positive learning environment
- Descriptions of behavior disruptive to such an environment
- Guidelines for responding to student conduct problems
- Specifications for the rights of students and assurances that the rights of students will not be denied in disciplinary situations

Increases in student age and maturity should be recognized in determining appropriate types of disciplinary action. Code of conduct procedures should never become so prescriptive that teachers and administrators are bound into actions that are not in the best interests of a student or a school. The code of conduct is a general guide for behavior, not a mechanism for creating rigid control. The individual personalities of students or extenuating circumstances surrounding a disciplinary event should be considered before corrective measures are prescribed.

Where possible, widespread participation should be encouraged in the development of a code of conduct. Teachers, administrators, parents, and students should be involved in making decisions with regard to behavior codes. The more people are involved in developing a code of conduct, the more likely it is that school participants will understand, accept and follow its guidelines. Students, like other people, are more likely to respect and obey rules that they have had a part in formulating. Likewise, teachers who have helped develop rules and policies will be more inclined to engage in rule enforcement.

Leadership teams or committees responsible for developing a code of conduct may find the following useful as they begin deliberations:

- Review of current disciplinary policies, procedures and rules
- Analysis of the reasons for school suspensions and expulsions
- Assessment of the reasons for counselor referrals regarding misbehavior, smoking, fighting, truancy, missed classes, tardiness...
- Review of current resource documents for discipline
- Consideration of the success rate of current disciplinary policies, procedures and rules

- Assessment of alternative disciplinary measures and procedures
- Assessment of how decisions regarding discipline are made and identification of the relative effectiveness of those decisions

The most desirable goal of a code of conduct is to create conditions that foster student self-discipline. Students are more likely to exercise self-discipline when they understand their rights, when they know what is expected of them, and when they understand the consequences of breaking school rules or infringing on the rights of others. Careful consideration also needs to be given to ensuring that code policies are clear, reasonable and enforceable. Policies or behavioral rules that are not reasonable or enforceable are counterproductive.

In addition, the total school staff must be made aware of their roles in enforcing school disciplinary policies. Consistency is essential. Consistency in enforcement includes discriminating between first time and repeat offenders; where appropriate, graduated correction should be built into policies. The charts on the following pages provide examples of how educators *might attempt* to clarify the consequences of various forms of student behavior. The actual method for dealing with a misbehavior is contingent upon such factors as the student involved, the factors precipitating the behavior, the seriousness of the offense, and the number of times the offense has been committed.

When code of conduct policies have been written and refined, they should be presented to the board of education for adoption. The adopted plan should then be distributed and explained to all students and teachers and sent home to parents. Revised Code Section 3313.661 also requires that the code of conduct be posted.

Teachers should be given copies of disciplinary policies and provided inservice with regard to their role in implementation. In a similar way, teachers should review the applicable policies with their students and discuss appropriate conduct with attention to consequences of misconduct.

Evaluation of the code of conduct should be conducted regularly, and applicable policies and rules should be constantly updated. As noted earlier, practices that are ineffective in decreasing the occurrence of a problem should be studied for possible change. Input for evaluation purposes should be sought from a representative sampling of the entire school community.

CODE OF CONDUCT

DISCIPLINARY OPTIONS

CHART 1

MISCONDUCT (Examples)	Teacher-Student Conference	Note to Parent	Isolation	Detention	Call to Parent	Parent Conference	Conference with Principal	Referral to the school counselor	Home Visit	Corporal Punishment	In-school Suspension	Short-term Suspension	Referral to community agency	Long-term Suspension	Expulsion
Tardiness to school or class															
Truancy	✓	✓		X	X	X	X		★		★				
Deliberate disruption															
Profanity/Vulgarity															
Fighting															
Smoking															
Vandalism															
False fire alarm/bomb threat															
Use/Possession of weapons, drugs, alcohol, fireworks															
Sale/distribution of drugs, alcohol, fireworks															
Intimidation/interference of staff/student															
Insubordination															

✓—First offense
X—Second offense
★—Third offense

Note: The above chart was adapted from the *Uniform Code of Conduct*, Jefferson County Public Schools, Louisville, Kentucky.

BEHAVIOR VIOLATIONS AND DISCIPLINARY PROCEDURES

CHART 2

DEFINITION	EXAMPLES OF VIOLATIONS	PROCEDURES	DISCIPLINARY OPTIONS/RESPONSES
Relatively minor misbehavior or general classroom disruption that interferes with the orderly educational process in the classroom or other areas.	Tardiness, cheating, lying, non-defiant failure to complete assignments or carry out directions, others.	Immediate intervention by the staff member who is supervising the student or one who observes the misbehavior. Repeated misbehavior indicates the need for a parent/teacher conference, conference with counselor and/or administrator. A proper and accurate record of the offense and disciplinary action is maintained by the staff member.	Written report to parents Verbal reprimand Special assignment related to offense Behavioral contract Counseling Withdrawal of classroom privileges Time-out area Strict supervised study Detention

Note: The above chart was adapted from *Student Conduct Code*, Clay County School Board, Green Cove Springs, Florida. This chart represents Level 1 of 4 levels of violations. It reflects the least punitive action taken by a teacher.

GUIDELINES FOR ACTION IN CONSIDERATION OF CERTAIN TYPES OF MISBEHAVIOR

GRADE	TYPE OF MISBEHAVIOR	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	FOURTH OFFENSE
9-12	ATTENDANCE RELATED Unexcused tardiness	Referral to principal.	Detention. Parent conference.	Up to 3 days in-school suspension.	Up to 3 days suspension. Refer to county attendance officer.
	Unexcused absence	Parent contacted. Possible detention.	Detention hour for every hour missed.	Up to 5 day in-school suspension. Refer to county attendance officer.	Refer to court for action.
	Truancy	Detention hour for every hour missed. Parents notified.	Parent conference. Up to 3 day in-school suspension. Refer to county attendance officer.	Up to 5 days suspension. Refer to court for action.	Up to 10 days suspension. Recommend superintendent expel.

CHART 3

Note: The above chart was adapted from the *Student-Parent Handbook*, Fredericktown Local Schools, Fredericktown, Ohio.

CODE OF CONDUCT

RIGHTS OF STUDENTS

CHAPTER 2
Rights of Students*

A. Constitutional Rights

The United States Supreme Court confirmed in the *Tinker* case that First Amendment rights are applicable to students in school. Essentially, students have the right to express their beliefs and opinions orally, symbolically and through publications as well as to peaceably assemble and petition the school for redress of grievances. Schools may not restrict a student's freedom of expression unless the expression can be shown to materially and substantially threaten to disrupt the normal activities of the school or classroom.

Revised Code Section 3313.20 authorizes boards of education, not individual school administrators, to make rules and regulations for maintaining order in the schools. That rulemaking authority granted by the State Legislature to school boards is balanced by the Constitution and the courts. A code of conduct should clearly outline student rights and responsibilities with particular attention to freedom of speech and student publications.

Student Speech and Expression

In the landmark United States Supreme Court case of *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) concerning the wearing of arm bands in protest against the Vietnam War, the court upheld the right of students to wear or display buttons, armbands, flags, decals or other badges of symbolic expression in school, where the manner of expression does not materially intrude upon the orderly process of the school or the rights of others. The United States Supreme Court found that the wearing of black armbands to express opposition to American involvement in Vietnam did not involve actual or threatened disorder or disruption of the work of the school or constitute a substantial interference with school discipline.

In a number of cases since *Tinker*, courts have addressed the question of whether particular instances of symbolic expression intrude upon the orderly process of the school or the rights of others. Courts have upheld restrictions on symbolic expression where evidence established that actual disruption or a clear danger of disruption existed. For example, a court ruled against the wearing of buttons where evidence established that the ban was necessary to preserve discipline in a racially tense school (*Guzick v. Drebus*, 305 F. Supp. 472). Still another court affirmed suspensions of students for

*Significant portions of material presented in this chapter were extracted from: *Guidelines for Students' Rights and Responsibilities* (New York State Department of Education) and *Students' Rights and Responsibilities Handbook* (California State Department of Education).

wearing black berets where the beret was worn as a symbol of the wearers' power to disrupt the school and where there was evidence of actual disruption (*Hernandez v. School District No. 1, Denver, Colorado,* 315 F. Supp. 289).

Student speech may be subject to disciplinary action or restrictions imposed by school officials if such speech:

- Is slanderous (i.e., spoken maliciously or without regard to the truth of the assertion);
- Clearly and immediately incites others to damage property or physically harm others; or
- Materially and substantially interferes with the normal operation of the school.

Considerations for Code of Conduct

The expression by students of their attitudes, ideas and opinions is vital to education in a democracy. Effective classroom activities are structured to encourage students to express, examine and debate their thoughts and those of others.

The opportunity to share ideas fosters the exercise of reason in forming, understanding and defending beliefs. School codes of conduct should focus on encouraging the free expression of ideas among students and establishing and maintaining a forum for the expression of legitimate student complaints.

Student Publications and Newspapers

Independent Newspapers. Several court decisions have made it quite clear that student independent newspapers are protected from public school official suppression by the First Amendment. The courts have held that such newspapers can be distributed on public school premises without prior censorship provided that (1) the papers do not contain materials that are either actionably libelous or obscene (*Baker v. Downey City Board of Education,* 307 F. Supp. 517 [1969]); (2) their distribution is not proven to be the direct cause of concurrent disruptions; and (3) administrators do not have conclusive proof that directly related disruptions would occur in the future (*Whitfield v. Simpson,* 312 F. Supp. 889 [1970]).

Although student independent newspapers are protected to an extent by the First Amendment, the legal status of these publications remains uncertain. School authorities are given the power to maintain order within the school, and in doing so they may prohibit independent newspapers from the school grounds if they believe that such publications would cause a disturbance or significantly disrupt the learning process in the school. Although they are not sanctioned by the schools, unofficial publications have moral and legal obligations to observe the normal rules of responsible journalism.

Sanctioned School Publications. Publications such as school newspapers, should reflect the policy and judgment of the student editors. Students have the responsibility to refrain from libel and obscenity and to observe the normal rules for responsible journalism. Within these bounds, student newspapers are as free as other newspapers to report the news and to editorialize.

In general, courts have upheld the right of students to criticize school personnel and to editorialize on contemporary, controversial topics. School officials have had to retreat from exercising full control over content and distribution of student newspapers. Students who write, edit, publish or distribute handwritten, printed or duplicated material among their fellow students within the schools must assume responsibility for the content of such materials.

School authorities may regulate the time, manner, place and duration for distributing literature on school grounds. They may regulate the content of literature to be distributed on school grounds only to the extent necessary to avoid material and substantial interference with the requirements of appropriate discipline in the operation of the school.

Considerations for Code of Conduct

The school's authority to enact rules governing the behavior of students and its parallel authority to suspend and expel students who violate those rules has been tempered by the First and Fourteenth Amendment rights of individuals and the concept of material disruption to the school environment. A code of conduct should address some or all of the following:

- Clear and definite policies should be developed regarding the writing, editing, publishing and distribution of literature by students.
- Clear and concise rules and regulations should address the distribution of student publications on school grounds. The distribution of obscene, libelous, inflammatory and/or seditious literature may be prohibited. Any rule preventing distribution of literature on school grounds should be both *reasonable* and *objectively justifiable.* Such rules and procedures might address themselves to the manner, method, time and place of distribution.
- Policies should focus on the types of literature students may possess on school grounds. Literature in the possession of students that is obscene, libelous, inflammatory and/or seditious should be considered in light of the possibility of substantial disruption of the educational process. Open display or distribution of such material by the student should be considered in determining an administrative response.

RIGHTS OF STUDENTS

- Policies should address administrative review of student publications. If school authorities contemplate the confiscation of publications in the possession of students, principles of fundamental fairness should be observed. A procedure should be established for the submission of a publication for administrative review prior to distribution. The procedure might address (1) the manner in which the publication is to be submitted for review; (2) the exact party to whom the publication should be submitted; (3) the time within which an administrative decision will be forthcoming; (4) the party from whom and the manner by which the publication may be retrieved by students; and (5) in the event of a negative decision regarding distribution, the opportunity for the right of appeal.
- Policies on advertisements in student publications should be developed. Thought should be given to the type and amount of advertising to be solicited, sold and accepted in official school publications. (A Federal court has held that a school that permitted publication of commercial advertising in the school newspaper could not arbitrarily reject an anti-war advertisement.)

B. Educational Opportunity Rights

A code of conduct should also include some reference to the rights of students regarding access to equal educational opportunities. As either a preamble to a code of conduct or, in some cases, as part of the formal content of the publication, reference should be made to the following education opportunity rights of students.

Handicapped and Special Education

Revised Code Section 3323.02 requires that all handicapped children of compulsory school age be provided with an appropriate public education at no cost to the parents. In 1972, federal courts in Pennsylvania and Washington, D.C. held that children could not be excluded from a publicly-supported education because of a handicap—regardless of the severity of handicap. The United States Congress passed the Education for All Handicapped Children Act of 1975 (Public Law 94-142) which gives each handicapped student the right to a free appropriate public education based on an individualized education plan developed in consultation with the parents. The Act also calls for educating handicapped children with those who are not handicapped to the maximum extent appropriate. Due process safeguards and other rights guaranteed by this Act are provided by Ohio law, as set forth in Revised Code Chapter 3323. More complete descriptions of the special education requirements are found in Ohio's *Rules for the Education of Handicapped Children* (1982), *A*

Look at Due Process (1983), and *A Few Questions and Answers About Due Process* (1983), all available from the Ohio Department of Education.

Race

The most significant race discrimination case is *Brown v. Board of Education of Topeka,* 347 U.S. 483 (1954) in which the U.S. Supreme Court held that separate schools for black and white students are inherently unequal and violate the equal protection clause of the Fourteenth Amendment of the U.S. Constitution. Federal and state statutes have been enacted prohibiting discrimination in public education on the basis of race, color or national origin. A clear statement of nondiscrimination on the basis of race should be provided in a code of conduct.

Minority Language Students

After the *Lau v. Nichols,* 414 U.S. 563 (1974) decision, Congress enacted laws mandating that no person be denied equal educational opportunity because of race or national origin by the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in the instructional programs. Under Title VI of the Civil Rights Act of 1964, the 1974 U.S. Supreme Court Decision of *Lau v. Nichols,* and the Equal Opportunity Act of 1974, school districts are required to take affirmative steps to rectify language deficiencies and open their instructional programs to all students, particularly national origin minority group children whose lack of English language skills prevents them from full participation in educational programs.

A code of conduct should include clear specification of the responsibility (and obligation) of educators to provide equal educational opportunities to students with language barriers.

Sex Discrimination

Title IX prohibits discrimination against students on the basis of sex. The regulations require that all courses and activities be available for both males and females. Schools may not require or suggest that a student take a particular course based upon traditional sex classifications. Courses such as industrial arts, home economics, physical education and health must be open equally to males and females.

Once organized, a physical education class may be separated on the basis of objective competitive skills grouping. Facilities such as locker rooms, showers and toilets must be comparable. Males and females, however, may be separated for that portion of a class that deals exclusively with human sexuality.

Each school district, according to Title IX, shall establish a grievance procedure that will provide a fast and equitable resolution for any

complaints of Title IX violations. Procedures shall be published as part of a code of conduct and students shall be informed of the publication. Ideally, complaints should be filed with a designated school district employee.

Married and Pregnant Students

According to the provisions of Title IX, Section 86.40, a board of education "shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex."

The regulation further states the following:

(1) *A recipient shall not discriminate against any student, or exclude any student from its educational program or activity, including any class or extra-curricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.*

(2) *A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.*

Additional information with regard to the preceding equal educational opportunity concepts may be obtained from the Ohio Department of Education publication titled *Rights and Responsibilities—Administrative Guidelines* (1983).

ISSUES

CHAPTER 3
Issues*

Several prominent conduct issues have been selected for discussion in this chapter: substance abuse, violence and vandalism, corporal punishment, personal appearance, truancy and tardiness, and non-school conduct. The material is not intended as an exhaustive review of each issue. Rather, the following information should provide persons responsible for developing a code of conduct with a general overview of each issue and establish a framework for formulating policy statements or procedural guidelines.

Substance Abuse

Courts have upheld school rules prohibiting the possession, use or sale of drugs or intoxicants by students. Challenges to such rules have generally involved several issues. These issues include vagueness in the wording of rules, violation of due process, illegal search and seizure in enforcement of rules, or abuse of discretion in rigid application of rules.

School rules that prohibit the sale, possession and use of alcohol and drugs (controlled substances), including counterfeit substances, are consistent with Ohio statutes (See Revised Code Chapter 2925). However, school prohibitions have not gone unchallenged. In *Wyatt v. Quisenberry,* unreported Case No. CV 80-02 0134 (C.P. Butler Cty. 1980), a school's policies were tried based on vagueness of wording. According to Jollay (1981), "The expelled student contended the rule was vague and contained no standard to determine whether or not a student was 'under the influence.' " The Ohio Court affirmed the expulsion on the basis that a person who consumes alcohol will be influenced to some degree.

Considerations for Code of Conduct

Rules governing the possession, use or sale of drugs or intoxicants should be drafted with sufficient specificity to state clearly what conduct constitutes a violation. Jollay (1981) suggests that "the language of a conduct code should be as precise as possible. Each rule should be drafted so that students of ordinary intelligence are given fair notice that certain conduct is forbidden." Before formulating policies with regard to substance abuse, administrators should determine the specific nature of local ordinances. A local police chief and the county or city clerk may be good sources for information.

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*Several portions of the material presented in this chapter were extracted from advisory memoranda distributed by the Indiana Department of Public Instruction, particularly Jon Bailey's paper, "Corporal Punishment in Indiana: A Legal Perspective" (1981).

The minimum standards require that systematic aid be provided to students, through guidance services, on the harmful effects of drugs, alcohol, and tobacco. School district personnel should recognize the need to offer assistance to students who misuse chemical substances. Additional information on potential support services for students may be obtained through the Ohio Department of Education publication *A K-12 Written Guidance Plan* (1983).

Violence and Vandalism

School officials are trustees of school property and are charged with the protection of school property. Further, they are charged with ensuring the safety of all individuals in the schools.

Revised Code Section 3313.20 provides in part: "The board of education shall make such rules and regulations as are necessary for... pupils of its schools..." This provision vests school boards not only with authority but also an affirmative duty to make such rules as might be necessary to prohibit the violent, destructive and seriously disruptive behavior of school students or anyone on the school premises. Challenges to school rules prohibiting such behavior have generally centered around due process, rule vagueness or abuse of discretion.

Considerations for Code of Conduct

While some subjectivity will necessarily be involved in enforcing rules pertaining to school disruptions, school personnel should clearly distinguish a serious ongoing disruption from routine student acts that briefly interrupt an activity or classroom. Acts of vandalism will be more clearly identifiable. A code of conduct that addresses both of these phenomena may include consideration of the following:

- Developing a policy requiring administrators and staff members to report serious incidents of violence and vandalism. If such a policy is developed, regulations should be established on *what* must be reported and *how* it must be reported. It may be useful to develop standard forms for use throughout the district for reporting incidents.
- Designating one person in the school system to be responsible for coordinating incident reporting. Persons responsible for monitoring disruptive incidents should carefully study the conditions that give rise to violence and vandalism.
- Developing guidelines that provide principals with direction for responding to the queries of the press, parents and others in the community following incidents of violence or vandalism.

ISSUES

Corporal Punishment

Ohio law authorizes the use of physical force by school officials for the purpose of maintaining proper discipline. While school law is quite specific about this authority, school boards may establish, in a code of conduct, conditions and circumstances regarding the use of corporal punishment.

Specifically, Revised Code Section 3319.41 provides the following:

> *A person employed or engaged as a teacher, principal, or administrator in a school, whether public or private, may inflict or cause to be inflicted, reasonable corporal punishment upon a pupil attending such school whenever such punishment is reasonably necessary in order to preserve discipline while such pupil is subject to school authority. Such persons and noncertificated school employees and school bus drivers may also, within the scope of their employment, use and apply such amount of force and restraint as is reasonable and necessary to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property.*

Revised Code Section 3319.41 authorizes both corporal punishment and physical restraint. Excessive or unreasonable corporal punishment, however, may violate federal and state laws. The infliction of excessive or unreasonable corporal punishment may also subject a school employee to criminal penalties under Ohio Revised Code. Jollay (1981) observed the following:

> In *Hall v. Tawney,* 621 F. 2d 607 (4th Cir. 1980), the court ruled that a complaint concerning the paddling of a student by a teacher, authorized in part by the principal, represented a valid claim under 42 U.S.C. 1983...The test to be applied in such cases "must be whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or an unwise excess of zeal that it amounted to a brutal or inhumane abuse of official power literally shocking to the conscience." A school employee who inflicts excessive corporal punishment under the circumstances described in *Hall v. Tawney* may also violate criminal statutes.

The United States Supreme Court has affirmed the need for minimal procedural due process before inflicting corporal punishment. Federal cases have held the following:

- Corporal punishment should never be used as the first line of punishment.

- The student must be informed beforehand that specific misbehavior could warrant corporal punishment.
- A teacher or principal should punish corporally in the presence of a second school official (teacher or administrator), who must be informed beforehand and in the student's presence of the reason for the punishment.
- The student need not be afforded formal due process procedures prior to corporal punishment.
- An official who has administered such punishment must provide the child's parent, upon request, a written explanation of the reasons for the punishment and give the name of the school official who was present as a witness.

Considerations for Code of Conduct

School conduct codes should clearly set forth the types of misconduct for which corporal punishment may be administered and the conditions under which physical restraint may be used. Developing a chart similar to the one provided in Chapter Two of this document may be helpful. Reasonableness is, of course, a paramount consideration in the enforcement of any prescribed punishment.

The following issues should be considered and examined before a school board adopts a policy regarding corporal punishment in the code of conduct.

- Concerns of parents and guardians who may oppose the use of physical punishment on children should be assessed. Where parents express strong objections to corporal punishment on religious or medical grounds, their objections should be considered.
- Possibility of psychological and/or physical injury to students should be assessed. Corporal punishment should be administered in accordance with the student's size, age and physical condition.
- Procedures for identifying disinterested adult witnesses should be specified. Procedures for identifying witnesses should be outlined, and the possibility of liability insurance for employees should be analyzed for scope and amount of coverage.
- Manner of administering corporal punishment should be prescribed (e.g., a code of conduct may prohibit use of rulers across the knuckles or open hand or use of an open hand to paddle a child on the buttocks).

Personal Appearance

School boards have the authority to develop and establish policies regarding student appearance. Generally, boards of education are permitted to adopt rules and regulations relating to hair and dress styles and may exclude from school students who disobey those appearance rules, if the rules are reasonably related to valid school purposes. The validity of school dress and grooming codes has

focused on whether school districts successfully demonstrated that dress codes were reasonably related to the educational function of the school. Federal court cases have upheld school district rights to establish regulations for the day-to-day operation of its schools. School districts have the right to develop a dress code, to specify acceptable hair length, and to demand conduct that is conducive to the fulfillment of its responsibility to educate.

Consideration for Code of Conduct

The following should be considered and examined in developing a code of conduct policy regarding personal appearance, dress and grooming:

- Principles undergirding *Tinker v. Des Moines* should be considered. In the *Tinker* case the court determined that students in school as well as out of school are "persons" under the Constitution and are possessed of fundamental rights that the state must respect. The rights of students must be balanced with the interest of the schools in carrying out educational objectives.
- Reasonableness of dress codes, regardless of who is involved in developing the codes, should be assessed. Rules governing personal dress and grooming should allow the individual the greatest possible freedom in determining his or her appearance while at the same time assuring order and discipline in the school. Rules and regulations governing dress and grooming must be related to the health and safety of students.
- Content of the promulgated rules and regulations should be specific. Rules and regulations should be sufficiently precise to ensure that all students understand the requirements for personal appearance.

Truancy and Tardiness

Revised Code Section 3321.01 makes school attendance compulsory. Such attendance commences with the beginning of the school year as determined by the school board.

Since school attendance is compulsory, each child in the specified age group is to attend a public or an approved non-public school. The Ohio compulsory school attendance law, Revised Code Sections 3321.01-3321.99, requires that every child of compulsory school age who is an actual resident of the state must attend a public school, special education program, or private or parochial school that conforms to the minimum standards prescribed by the state board of education unless the child is excused from compulsory education under one of the statutory exceptions (Revised Code Sections 3321.03, 3321.04, 3321.07). The child's parent or guardian is required to see that the child attends school for the full time school is in session (Revised Code Section 3321.04). Children whose residence in the state

is seasonal, whose parents reside in another state, or who have not attended school in another state for the legal period required by the state must also comply with the compulsory education law.

Revised Code Section 3321.19 makes it mandatory for a school district to examine all truancy cases, notify parents in writing of the penalties if a child is found truant, and file a complaint with the appropriate court if the child does not cease being truant. A code of conduct should include reference to the consequences of truancy for parents and students.

Revised Code Section 3321.19 reads in part:

> *On the request of the superintendent of schools or board of education or when it otherwise comes to his notice, the attendance officer shall examine into any case of supposed truancy within his district, and warn the child, if found truant, and his parents, guardian or other person in charge of him, in writing, of the legal consequences of truancy if persisted in. When any child of compulsory school age, in violation of law, is not attending school, the attendance officer shall notify the parent...of the fact and require such parent...to cause the child to attend school forthwith; and the parent...shall cause such child's attendance at school. Upon the failure of the parent...to do so, the attendance officer shall make complaint against the parent...in any court of competent jurisdiction.*

Children of compulsory school age may be excused from attendance for religious reasons and assigned to home-based instruction that meets state requirements. All children of compulsory school age, whether married or single, are subject to the compulsory attendance provisions of Revised Code Chapter 3321 unless exempted or excused from attendance for one or more of the following reasons.

- A child is over sixteen years of age, holds an age and schooling certificate, and is regularly employed.
- A child attends a private or parochial school that conforms to the minimum standards prescribed by the state board of education.
- A child has graduated from the twelfth grade.
- A child receives instruction at home by a qualified person.
- A child is over fourteen years of age and is temporarily excused from school attendance to perform necessary work at home.
- A child's bodily or mental condition does not permit attendance at school or at a special education program.
- A child is suspended or expelled for good and sufficient reason under board of education rules on discipline.

The superintendent of schools of the school district in which the child resides determines whether the child may be excused for the reasons listed above. All such excuses must be in writing and a copy sent to the child's parent or guardian. Each board of education, or the governing authorities in a private or parochial school, may establish rules and regulations regarding excused absences for good and sufficient reasons (Revised Code Section 3321.04 C).

Considerations for Code of Conduct

The school is expected to provide a pleasant, stimulating, supportive atmosphere for students, making school attendance desirable. However, when schools are confronted with truant students, appropriate staff and procedures should be provided to enforce the attendance laws.

Before truancy or attendance officers bring the courts into the situation, informal school measures should be tried for less chronic cases. Informal school measures may include detentions, parent conferences...

The following requirements regarding pupil attendance might be considered for inclusion in a code of conduct.

- Parents may be asked, particularly at the high school level, to contact the school if a student is to be absent. Following a student absence, students may be asked to bring a written note from the parent that gives the date of and the reason for an absence.
- Acceptable legal or administrative reasons for school absence may be specified in the code of conduct. Examples might include personal illness, religious holiday, death in family or quarantine.
- Code of conduct policies should specify the nature of acts of truancy. Truancy might include, for example, the following:
  - Leaving school without permission;
  - Being absent from school without a parent's knowledge;
  - Being absent from class without permission;
  - Obtaining a pass to go to a specified place and failing to report there; or
  - Coming to school but not attending classes.
- Policies should be developed to specify the consequences of both excused and unexcused absences. Students should be aware of their responsibility to complete and make up work. Students with unexcused absences should be aware of the consequences for being absent from school without a valid reason.
- Policies should address the issue of tardiness. Specific procedures should be developed for dealing with tardiness and students should be apprised of the consequences associated with tardy behavior.

ISSUES

Nonschool Conduct and Extracurricular Activities

The school's authority pertaining to student actions off school grounds (e.g., student behaviors occurring while coming to or leaving school activities) is often a source of concern and uncertainty. Procedures for dismissing students from extracurricular activities are frequently vague or nonexistent. School authorities, students and parents need to be aware of what the law permits with regard to disciplinary actions for nonschool activities and extracurricular participation. In developing policy for a code of conduct, individuals are encouraged to consult *Legal Aspects of Student Discipline in Ohio* (Jollay, 1981) and the Ohio Department of Education publication *Rights and Responsibilities—Administrative Guidelines* (1983). These documents describe the scope of the school's authority in dealing with matters of student conduct off school grounds and in excluding students from participation in extracurricular activities. In particular, Jollay (1981) has noted the following:

(1) School authorities can take action for student out-of-school conduct if that conduct could lead to devastating consequences in the school and if the "off-campus misconduct... has a direct and immediate effect on school discipline or welfare."

(2) School authorities should "consider the development and adoption of conduct codes governing student participation in extra-curricular activities. School districts also should consider the development and adoption of procedures for disciplining students who violate such rules."

DUE PROCESS

CHAPTER 4
Code of Conduct and Due Process

Revised Code Section 3313.661 states the following:

> *Each board of education shall adopt a code regarding suspension, expulsion and removal specifying the types of misconduct for which a pupil may be suspended, expelled, or removed, and a copy of the code shall be posted in a central location in the school and made available to pupils upon request. Thereafter, no pupil shall be suspended, expelled, or removed except in accordance with the code adopted by the board of education of the school district in which the pupil attends school.*

Due process is a broad constitutional concept relating to substance and procedure. The essence of both substantive and procedural due process in the area of student discipline is to protect students against arbitrary and capricious actions. Substantive due process demands that a school rule be reasonable and fair. Procedural due process requires a just and orderly proceeding when a student is charged with a violation of a school rule. In essence, the concept of due process includes the following:

- Being informed of charges and evidence
- Being given the opportunity to present one's case
- Having the right of appeal

While the courts have yet to define the parameters of student rights, it is required that students be accorded substantive and procedural due process. Substantive due process requirements were summarized in *Baker v. Downey City Board of Education*, 307 F. Supp. 517 (C.D. Ca. 1969) as follows:

> *A state law, rule or regulation, governing the conduct of high school students must be sufficiently definite to provide notice to reasonable students that they must conform their conduct to its requirements and may not be so vague that persons of common intelligence must guess at its meaning...*

The procedural due process required for students was set forth as follows in *Goss v. Lopez*, 419 U.S. 565 (1975):

> *At the very minimum... students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing...(students) facing temporary suspension have interests qualifying for protection of the Due Process Clause...*

These rudimentary procedures were prescribed for suspension of ten days or less. Longer suspension or expulsions require more formal procedures.

DUE PROCESS

In addition to procedural and substantive due process, the Fourteenth Amendment also affords students equal protection. The Fourteenth Amendment of the U.S. Constitution protects the rights of persons against arbitrary and unreasonably imposed deprivation of life, liberty or property without due process of law.

Substantive Due Process

Substantive due process is concerned with the establishment of rules and regulations. It requires that rules bear a reasonable relationship to proper governmental purposes. In the context of schools, those rules should be related to valid educational purposes. Rules must not go so far beyond school purposes as to constitute an abuse of authority.

In developing a policy governing school rules and regulations, the following principles should be kept in mind:

- A policy must provide notice of what conduct is prohibited or permitted.
- A rule must be reasonably understandable to the average student.
- A rule must be rationally related to a valid educational purpose.
- A rule must be sufficiently precise so as not to prohibit constitutionally protected activities.
- A policy must provide students with notice of potential consequences for violating specific rules.
- A type of punishment specified in the policy must be within the expressed or implied authority of the school district to utilize.
- A copy of the rules and procedures must be disseminated to all students.

Procedural Due Process

Procedural due process can be best characterized as a method for ensuring that a student is afforded every opportunity for a fair and reasonable determination (substantiated by evidence) that cause exists to justify an official school-imposed sanction. In the school context, procedural due process requirements will vary depending on the length of a suspension (e.g., a short-term suspension versus a long-term expulsion). Expulsion, the most serious school-initiated punishment, should be decided by the superintendent upon recommendation of the building principal or a designated subordinate.

The following should be considered as some elements of procedural due process.

- A student should be given specific notice of charges. (Required for expulsion and suspension)
- A student has a right to present evidence in his or her own behalf. (Required for expulsion and suspension)
- A student has a right to an impartial hearing. (Required for expulsion and suspension)

- A student has a right to rebut adverse testimony. (Required for expulsion and suspension)
- A student has a right to be represented by qualified counsel at a hearing. (Required for expulsion, not required for suspension)
- A student has a right to appeal. (Required for expulsion and suspension)

Due Process and Special Education Students

Public Law 94-142 guarantees due process for handicapped children, suspected handicapped children, and their parents. Due process guaranteed to handicapped students assures that every handicapped student has the opportunity to receive a "free appropriate public education," available at no expense to the parent, and based upon a multifactored evaluation conducted by a multidisciplinary team. Due process is also a system for resolving disagreements between parents and school districts about the provision of a free appropriate public education or the education status of a handicapped student. A more thorough discussion of due process is available through two booklets: *A Look at Due Process for Parents of Handicapped Children* (1983) and *A Few Questions and Answers About Due Process for Parents of Handicapped Children* (1983). Both booklets are available from the Division of Special Education, Ohio Department of Education.

In *Kaelin v. Grubbs,* 4 EHLR 554:115 (1982), the Sixth Circuit Court of Appeals held that handicapped children are not entitled to completely separate disciplinary procedures and may be temporarily suspended without employing the procedural safeguards required by P.L. 94-142. However, the due process procedures required by *Goss v. Lopez* must be followed for handicapped students as they would be for a nonhandicapped student. Further, in the *Kaelin v. Grubbs* decision, the Court of Appeals ruled that the expulsion of a handicapped student from school is a change in placement, thereby requiring federal due process procedures to be followed. The suspension of a handicapped student for up to ten days per year does not constitute a change of educational placement. However, removal in excess of an aggregate of 10 days per year is a change of placement requiring the same procedures as an expulsion.

DUE PROCESS

In summary, school and school district personnel should specify clearly the reasons for suspension and expulsion, outline the due process procedures and identify the person authorized to initiate penalties. An example of how this might be done is provided below.*

Penalty: Suspension

Possible Reasons But Not Limited To:
- Truancy.
- Vulgar or obscene language used to disrupt the educational process.
- Not obeying a teacher's reasonable request or interfering with a teacher(s) conduct of a class.
- Not accepting discipline or punishment.

Authorized Person(s): Superintendent or School Principal

Procedures:
- The suspension may neither exceed ten days nor extend beyond the current semester.
- The authorized person must give the pupil committing an offense written notice of the intention to suspend and the reasons for the intended suspension.
- The suspension must be preceded by an informal hearing for the student before the principal, assistant principal, superintendent or the superintendent's designee.
- The suspension must be followed by *written* notification within 24 hours to the student's parent, guardian, or custodian, and the treasurer of the board of education. Notification must include the following:
  - Reason for the suspension.
  - Appraisal of right to appeal to the board of education or its designee within a reasonable time, and right to representation at appeal proceedings.

*Examples of form letters relative to the requirements of Revised Code Section 3313.66 are available on pages 30-33 in *Legal Aspects of Student Discipline in Ohio* (Jollay, 1981).

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